

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

ALEX FIGUEROA,
on behalf of himself and others similarly
situated,

Plaintiff,

vs.

COLLECTIVE ACTION

NO PRESSURE ROOF CLEANING LLC, a
Florida Limited Liability Company, and
PAUL B. GUITARD, an individual,

Defendants.

COMPLAINT

INTRODUCTION

1. This is a collective action brought pursuant to the Fair Labor Standards Act of 1938, 29 U.S.C. § 201, et seq. (hereinafter “FLSA”), to recover unpaid overtime compensation owed to Plaintiff ALEX FIGUEROA, and all others similarly situated to him who were formerly or are currently employed as spray technicians by Defendants NO PRESSURE ROOF CLEANING LLC, (hereinafter, “NO PRESSURE”) and PAUL B. GUITARD.

2. Pursuant to the FLSA, Plaintiff, on behalf of himself and all others similarly situated to them, seeks unpaid overtime compensation, liquidated damages or pre-judgment interest, post-judgment interest, attorneys’ fees and costs from Defendants NO PRESSURE and PAUL B. GUITARD. Plaintiff, on his own behalf, seeks damages for unlawful retaliation for being terminated after complaining to Defendants about not receiving overtime compensation, in violation of 29 U.S.C. § 215.

3. Plaintiff also requests the Court to authorize concurrent notice to all persons who were formerly or are currently employed by Defendants NO PRESSURE and PAUL B. GUITARD,

and who were paid in a similar manner as Plaintiff, or who were so employed during the Liability Period, informing them of the pendency of this action and their right to opt into this lawsuit pursuant to the FLSA, 29 U.S.C. §216(b).

JURISDICTION

4. This Court has jurisdiction over this action pursuant to the Fair Labor Standards Act of 1938 (“FLSA”), as amended, 29 U.S.C. §216(b), and 28 U.S.C. §1331 and 1337.

VENUE

5. Venue is proper in this Court under 28 U.S.C. §1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in Palm Beach County, Florida and within the Southern District of Florida.

PARTIES

6. Plaintiff ALEX FIGUEROA (hereinafter “Plaintiff” or “FIGUEROA”) was, at all material times, a resident of Palm Beach County, Florida and was employed as an hourly wage spray technician Defendants NO PRESSURE and PAUL B. GUITARD for their roof cleaning business in Palm Beach County, Florida, until his separation from employment on January 23, 2017.

7. Defendant PAUL B. GUITARD, (hereinafter “GUITARD”), who resides in the Southern District of Florida, was, and still is, an owner and/or operator of Defendant NO PRESSURE.

8. Defendant GUITARD acted and acts directly in the interests of Defendant NO PRESSURE, in relation to its employees, including the Plaintiff and all others similarly situated, in that GUITARD hired spray technicians, set their pay rate, determined their work schedule, and ultimately terminated many employees. Thus, GUITARD was and is an employer within the meaning of Section 3(d) of the Act, 29 U.S.C. § 203(d).

9. At all times material, Plaintiff was an employee of Defendants NO PRESSURE and GUITARD within the meaning of the FLSA.

10. At all times material, during Plaintiff's employment with Defendants NO PRESSURE and GUITARD, Plaintiff was engaged in commerce or in the production of goods for commerce. To wit: Plaintiff handled goods and materials that traveled in interstate commerce and utilized tools and equipment that were manufactured in other states outside of Florida.

11. At all times material, Defendant NO PRESSURE was an "enterprise engaged in commerce" within the meaning of 29 U.S.C. § 203(s)(1) with annual gross sales in excess of \$500,000 within the meaning of the FLSA. Defendant, NO PRESSURE is a Florida Limited Liability Company doing business throughout South Florida, and is an enterprise engaged in an industry affecting commerce, is an employer as defined by 29 U.S.C. § 203(d) and (s)(1), in that it has employees engaged in commerce or in the production of goods for commerce, or that has employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person; and it is an enterprise whose annual gross volume of sales made or business done is not less than \$500,000 (exclusive of excise taxes at the retail level that are separately stated) which has employees subject to the provisions of the FLSA, 29 U.S.C. § 207. At all times pertinent to this Complaint, NO PRESSURE operates as an organization which sells and/or markets its services and/or goods to customers throughout the United States and also provides its services for goods sold and transported from across state lines of other states, and NO PRESSURE obtains and solicits funds from non-Florida sources, accepts funds from non-Florida sources, uses telephonic transmissions going over state lines to do their business, transmit funds outside the State of Florida, and otherwise regularly engages in interstate commerce, particularly with respect to its employees.

FACTUAL ALLEGATIONS

12. The allegations in Paragraphs 1 through 11 are incorporated as if fully stated herein.

13. Plaintiff is a non-exempt former employee of Defendants NO PRESSURE and GUITARD who worked as an hourly wage spray technician for Defendants' roof cleaning business located in Palm Beach County, Florida.

14. From on or about December 2011 until January 23, 2017, Plaintiff worked more than 40 hours per week during nearly every week of his employment, without being paid the federally mandated wage for overtime. Specifically, Plaintiff was paid only straight time and Plaintiff was not paid for all hours worked.

15. Defendants violated the FLSA by failing to pay Plaintiff for all overtime hours worked in excess of forty per week at the applicable time and one-half rate.

16. Defendants pay all of their hourly wage employees in the same fashion. There are at least fifty other current and former employees who were paid only straight time for overtime hours, and are thus owed the half-time premium as well. In addition, these similarly situated individuals were not paid for all hours worked, and are therefore owed the full time and half overtime rate for many, if not all of these hours.

17. Defendants' time keeping practices do not comply with the FLSA because their workers are not paid for certain pre-shift and post-shift activities that are required to be performed by Defendants, are not de minimis, and ultimately are compensable because the work performed benefits the Defendants' business. Such pre-shift and post-shift activities include cleaning the company work truck and equipment, filling the company work truck with water and chemicals, and reconciling payments received from customers.

LEGAL CLAIMS

COUNT I (as to Plaintiff and those similarly situated):

Failure to Pay Overtime Wages in Violation of 29 U.S.C. § 207 by All Defendants

18. The allegations in Paragraphs 1 through 17 are realleged and fully incorporated by reference herein.

19. By its actions alleged above, Defendants NO PRESSURE and GUITARD, willfully, knowingly and/or recklessly violated the provisions of FLSA, which requires overtime wages to be paid to non-exempt employees, including those set forth in the provisions of 29 U.S.C. § 207.

20. As a result of the unlawful acts of Defendants Plaintiff and all persons similarly situated to him have been deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery of such amounts in addition to liquidated damages or prejudgment interest, post-judgment interest, attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and all employees similarly situated who join in this action pray for this Court to enter an order certifying a collective action pursuant to section 216(b) for violations of the FLSA, and pray for this Court to grant the following relief:

A. To authorize the issuance of notice at the earliest possible time to all current and former spray technician employees who were employed by Defendants, and who were paid hourly. This notice should inform them that this action has been filed, describe the nature of the action, and explain their right to opt into this lawsuit if they were not paid overtime wages as required by the FLSA;

B. To declare that Defendants have violated the overtime provisions of the FLSA, 29 U.S.C. § 207, as to Plaintiff and persons similarly situated;

C. To declare that Defendants' violations of the FLSA were willful;

D. To award Plaintiff and other similarly situated current and former employees of

Defendants adequate damages for the amount of unpaid overtime wage compensation they are owed, subject to proof at trial;

E. To award Plaintiff and other similarly situated current and former employees of Defendants liquidated damages in an amount equal to the unpaid overtime compensation shown to be owed pursuant to 29 U.S.C. §216(b);

F. If liquidated damages are not awarded, then the Court should award, in the alternative, prejudgment interest;

G. To make the same declarations and awards as prayed for in paragraphs A-F above as to all persons who opt into this action pursuant to 29 U.S.C. §216(b); and

H. To award Plaintiff and other similarly situated current and former employees of Defendants their reasonable attorneys' fees and costs pursuant to 29 U.S.C. §216(b).

COUNT II (as to Plaintiff FIGUEROA only)
Retaliatory Discharge in Violation of 29 U.S.C. § 215 by All Defendants

21. Plaintiff realleges, as if fully set forth in Count II, the allegations of Paragraphs 1 through 20 above.

22. Plaintiff, at several times during the course of his employment with Defendant, complained about not receiving compensation for all compensable hours.

23.. On or about January 22, 2017, Plaintiff advised GUITARD that he owed him and all other employees overtime compensation.

24. The very next day, Plaintiff was taken off of the schedule and effectively terminated by Defendants.

25. Defendants' actions as more particularly described above were directly related to and in response to Plaintiff's various complaints about his pay, since there are no other justifiable reasons for Defendants' adverse employment action.

26. Plaintiff's complaints about his pay constitute statutorily protected conduct under

Section 15(a)(3) of the FLSA.

27. Defendants' adverse treatment of Plaintiff was a direct result of Plaintiff's public opposition to Defendant's pay practices.

28. The conduct more specifically alleged above violated Plaintiff's rights against retaliation for opposing unlawful employment actions, which retaliation is proscribed by the FLSA.

29. Plaintiff is entitled pursuant to 29 U.S.C. § 216(b), to recover from Defendant:

- a. All lost wages that are due, including pre-judgment interest;
- b. As liquidated damages, an amount equal to lost wages
- c. The costs of this action, and;
- d. A reasonable attorney's fee.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this court will grant judgment against Defendant:

- A. awarding Plaintiff all lost wages found by the court to be due to him, including pre-judgment interest;
- B. awarding Plaintiff payment of liquidated damages in an amount equal to the lost wages due to him;
- C. reinstatement to his previous position at the same rate of pay;
- D. awarding Plaintiff his costs, including a reasonable attorney's fee; and
- E. granting such other and further relief as is just.

JURY DEMAND

Plaintiff demands trial by jury on all issues so triable.

Dated: April 21, 2017
Plantation, Florida

Respectfully submitted,

/s/**Robert S. Norell**

Robert S. Norell, Esq. (Fla. Bar No. 996777)

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ROBERT S. NORELL, P.A.

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Plantation, Florida 33317

Telephone: (954) 617-6017

Facsimile: (954) 617-6018

Counsel for Plaintiff ALEX FIGUEROA

JS 44 (Rev. 07/16) FLSD Revised 07/01/2016

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

I. (a) PLAINTIFFS

Alex Figueroa

DEFENDANTS

No Pressure Roof Cleaning LLC. and Paul Guitard

(b) County of Residence of First Listed Plaintiff **Palm Beach**
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant **Palm Beach**
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Robert S. Norell, P.A. 300 NW 70th Avenue, Suite 305, Plantation, FL 33317; (954) 617-6017

(d) Check County Where Action Arose: ☐ MIAMI-DADE ☐ MONROE ☐ BROWARD ☒ PALM BEACH ☐ MARTIN ☐ ST. LUCIE ☐ INDIAN RIVER ☐ OKEECHOBEE ☐ HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 5 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

- | | | | | |
|---|---|--|--|---|
| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
| <input type="checkbox"/> 110 Insurance | PERSONAL INJURY | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 | <input type="checkbox"/> 422 Appeal 28 USC 158 | <input type="checkbox"/> 375 False Claims Act |
| <input type="checkbox"/> 120 Marine | <input type="checkbox"/> 310 Airplane | <input type="checkbox"/> 690 Other | <input type="checkbox"/> 423 Withdrawal 28 USC 157 | <input type="checkbox"/> 376 Qui Tam (31 USC 3729 (a)) |
| <input type="checkbox"/> 130 Miller Act | <input type="checkbox"/> 315 Airplane Product Liability | | PROPERTY RIGHTS | <input type="checkbox"/> 400 State Reapportionment |
| <input type="checkbox"/> 140 Negotiable Instrument | <input type="checkbox"/> 320 Assault, Libel & Slander | | <input type="checkbox"/> 820 Copyrights | <input type="checkbox"/> 410 Antitrust |
| <input type="checkbox"/> 150 Recovery of Overpayment or Enforcement of Judgment | <input type="checkbox"/> 330 Federal Employers' Liability | | <input type="checkbox"/> 830 Patent | <input type="checkbox"/> 430 Banks and Banking |
| <input type="checkbox"/> 151 Medicare Act | <input type="checkbox"/> 340 Marine | | <input type="checkbox"/> 840 Trademark | <input type="checkbox"/> 450 Commerce |
| <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) | <input type="checkbox"/> 345 Marine Product Liability | | LABOR | <input type="checkbox"/> 460 Deportation |
| <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits | <input type="checkbox"/> 350 Motor Vehicle | <input checked="" type="checkbox"/> 710 Fair Labor Standards Act | SOCIAL SECURITY | <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations |
| <input type="checkbox"/> 160 Stockholders' Suits | <input type="checkbox"/> 355 Motor Vehicle Product Liability | <input type="checkbox"/> 720 Labor/Mgmt. Relations | <input type="checkbox"/> 861 HIA (1395ff) | <input type="checkbox"/> 480 Consumer Credit |
| <input type="checkbox"/> 190 Other Contract | <input type="checkbox"/> 360 Other Personal Injury | <input type="checkbox"/> 740 Railway Labor Act | <input type="checkbox"/> 862 Black Lung (923) | <input type="checkbox"/> 490 Cable/Sat TV |
| <input type="checkbox"/> 195 Contract Product Liability | <input type="checkbox"/> 362 Personal Injury - Med. Malpractice | <input type="checkbox"/> 751 Family and Medical Leave Act | <input type="checkbox"/> 863 DIWC/DIWW (405(g)) | <input type="checkbox"/> 850 Securities/Commodities/Exchange |
| <input type="checkbox"/> 196 Franchise | PERSONAL PROPERTY | <input type="checkbox"/> 790 Other Labor Litigation | <input type="checkbox"/> 864 SSID Title XVI | <input type="checkbox"/> 890 Other Statutory Actions |
| | <input type="checkbox"/> 370 Other Fraud | <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | <input type="checkbox"/> 865 RSI (405(g)) | <input type="checkbox"/> 891 Agricultural Acts |
| REAL PROPERTY | <input type="checkbox"/> 371 Truth in Lending | | FEDERAL TAX SUITS | <input type="checkbox"/> 893 Environmental Matters |
| <input type="checkbox"/> 210 Land Condemnation | <input type="checkbox"/> 380 Other Personal Property Damage | | <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) | <input type="checkbox"/> 895 Freedom of Information Act |
| <input type="checkbox"/> 220 Foreclosure | <input type="checkbox"/> 385 Property Damage Product Liability | | <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 896 Arbitration |
| <input type="checkbox"/> 230 Rent Lease & Ejectment | PRISONER PETITIONS | | | <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision |
| <input type="checkbox"/> 240 Torts to Land | Habeas Corpus: | IMMIGRATION | | <input type="checkbox"/> 950 Constitutionality of State Statutes |
| <input type="checkbox"/> 241 Tort Product Liability | <input type="checkbox"/> 463 Alien Detainee | <input type="checkbox"/> 462 Naturalization Application | | |
| <input type="checkbox"/> 290 All Other Real Property | <input type="checkbox"/> 510 Motions to Vacate Sentence | <input type="checkbox"/> 465 Other Immigration Actions | | |
| | Other: | | | |
| | <input type="checkbox"/> 440 Other Civil Rights | | | |
| | <input type="checkbox"/> 441 Voting | | | |
| | <input type="checkbox"/> 442 Employment | | | |
| | <input type="checkbox"/> 443 Housing/Accommodations | | | |
| | <input type="checkbox"/> 445 Amer. w/Disabilities - Employment | | | |
| | <input type="checkbox"/> 446 Amer. w/Disabilities - Other | | | |
| | <input type="checkbox"/> 448 Education | | | |
| | <input type="checkbox"/> 530 General | | | |
| | <input type="checkbox"/> 535 Death Penalty | | | |
| | <input type="checkbox"/> 540 Mandamus & Other | | | |
| | <input type="checkbox"/> 550 Civil Rights | | | |
| | <input type="checkbox"/> 555 Prison Condition | | | |
| | <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement | | | |

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Re-filed (See VI below) ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation Transfer ☐ 7 Appeal to District Judge from Magistrate Judgment ☐ 8 Multidistrict Litigation - Direct File ☐ 9 Remanded from Appellate Court

VI. RELATED/RE-FILED CASE(S)

(See instructions): a) Re-filed Case ☐ YES ☒ NO

b) Related Cases ☐ YES ☒ NO

JUDGE:

DOCKET NUMBER:

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):

29 U.S.C. sec. 207 (Unpaid Overtime)

LENGTH OF TRIAL via 2-3 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

DATE April 21, 2017

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

IFP

JUDGE

MAG JUDGE

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

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☐ I personally served the summons on the individual at *(place)* _____
on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Former Employee of Roof Cleaning Company Claims Unpaid OT, Retaliation](#)
